Kannan a/l Munian & Ors v Gopal a/l Subramaniam (Chairman of Persatuan Penganut Dewa Sri Maha Mariamman Ladang Sin Wah (Metro Kajang) Kamunting) & Ors and another appeal

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NOS B-02(W)-1496–09 OF 2015 AND NO B-02(W)-1497–09 OF 2015
HAMID SULTAN, PRASAD ABRAHAM AND ASMABI MOHAMAD JJCA
20 OCTOBER 2017

Tort — Trespass — Allegations of — Dispute over land where temple built on — Whether claimants were beneficial owners pursuant to deed of settlement entered into with land owner — Whether claimants were administering and managing affairs of temple at all material times — Whether there was trespass

There were two appeals. The first appeal ('Appeal No 1496') concerned the appeal by the appellants ('the plaintiffs in Suit 1') against the decision of the High Court in dismissing the appellants' claim for tort of trespass against the respondent ('the defendants in Suit 1'). The second appeal ('Appeal No 1497') was also by the appellants against the decision of the High Court which allowed the claim filed by one Gopal Subramaniam ('the plaintiff in Suit 2'), on behalf of Persatuan Penganut Dewa Sri Maha Mariamman Ladang Sin Wah (Metro Kajang) Kamunting ('the society'). The plaintiff's claim in Suit 2 was for a declaration that the society was the valid and registered body to manage and administer the affairs of Kuil Dewa Sri Maha Mariamman Ladang Sin Wah (Metro Kajang) Kamunting ('the temple') where the appellants were the defendants and the first respondent was the plaintiff. In essence, the dispute between the plaintiffs and the defendants was over the temple. The plaintiffs sued the defendants for trespass of the land on which the temple stood, which they claimed they were the beneficial owners pursuant to a deed of settlement they had entered into with the land owner Cekap Corp Bhd ('Cekap'). The defendant denied that the plaintiffs were the beneficial owners of the land on which the temple stood and asserted that the society had been running and managing the temple since 2001. At the High Court, the issues that arose were: (a) whether the plaintiffs were the beneficial owners of the land where the temple stood; and (b) who was administering and managing the affairs of the temple at all material times. The High Court judge allowed the claims. Hence, the present appeal.

Held, dismissing appeals:

(1) The High Court judge had sufficiently evaluated the evidence before His Lordship, both testimonial and documentaries and correctly allowed the plaintiff's claim against the defendant in Suit 2 and dismissed the plaintiff's claim against the defendants in Suit 2. There was no appealable error which merited appellate intervention (see para 44).

(2) The plaintiffs could not maintain the action against the defendant on trespass as they were not the beneficial owners of the land. The plaintiffs had no locus standi. Evidence from a representative of Cekap showed that the plaintiffs only purchased a portion of the land and not the whole land, as pleaded. Furthermore, the land which the temple stood was not on the portion of the land purchased by the plaintiffs. In fact, Cekap made a promise to donate the land where the temple stood not to the occupiers but to a body to be constituted. In other words, the occupiers were required to form a temple committee and only after the lot had been subdivided could the intention in the deed of gift be affected. The land on which the temple stood was meant to be used by the devotees and the public and not specifically for use of the plaintiffs and/or their families (see paras 35, 37 & 39).

(3) The temple had initially been managed and run by an informal temple committee consisting of Hindu devotees and the occupiers who live and work in Sin Wah estate until 2001. Water bills and electricity bills were registered in the name of the trustees and/or society. All expenses for the purchase of items for the religious ceremonies held by the temple were made by the society. Furthermore, documentary evidence proved that receipts of donations were from the public for the maintenance and management of the temple. The evidence was overwhelmingly in favour of the plaintiff in Suit 2 (see paras 28 & 42).

[Bahasa Malaysia summary

Terdapat dua rayuan. Rayuan pertama ('Rayuan No 1496') adalah berkenaan rayuan oleh perayu-perayu ('plaintif-plaintif dalam Guaman 1') terhadap keputusan Mahkamah Tinggi dalam menolak tuntutan perayu-perayu bagi tort pencerobohan terhadap responden ('defendan-defendan dalam Guaman 1'). Rayuan kedua ('Rayuan No 1497') adalah juga oleh perayu-perayu terhadap keputusan Mahkamah Tinggi dalam membenarkan tuntutan yang difailkan oleh seorang bernama Gopal Subramaniam ('plaintif dalam Guaman 2'), bagi pihak Persatuan Penganut Dewa Sri Maha Mariamman Ladang Sin Wah (Metro Kajang) Kamungting ('persatuan'). Tuntutan plaintif dalam Guaman 2 adalah bagi deklarasi bahawa persatuan sah dan dan satu badan berdaftar bagi menguruskan dan mentadbir hal ehwal Kuil Dewa Sri Maha Mariamman Ladang Sin Wah (Metro Kajang) Kamunting ('kuil') di mana perayu-perayu adalah defendan-defendan dan responden pertama adalah plaintif. Asasnya, pertikaian antara plaintif-plaintif dan defendan-defendan adalah tentang kuil. Plaintif-plaintif menyaman

defendan-defendan bagi pencerobohan tanah di mana terdirinya kuil yang mereka tuntut sebagai pemilik benefisial bawah surat ikatan penyelesaian yang mereka masuki dengan pemilik tanah tersebut iaitu Cekap Corp Bhd ('Cekap') Defendan menafikan bahawa plaintif-plaintif adalah pemilik-pemilik benefisial tanah yang atasnya terdiri kuil dan menegaskan persatuan menguruskan dan menyelia kuil tersebut sejak 2001. Di Mahkamah Tinggi, isu-isu yang timbul adalah: (a) sama ada plaintif-plaintif adalah pemilik benefisial tanah di mana terdirinya kuil tersebut; dan (b) siapakah yang mentadbir dan menguruskan hal ehwal kuil pada setiap masa material. Mahkamah Tinggi membenarkan tuntutan-tuntutan. Oleh itu, rayuan ini difailkan.

Diputuskan, menolak rayuan-rayuan:

(1) Hakim Mahkamah Tinggi telah menilai keterangan dengan secukupnya di hadapan beliau, iaitu kedua-dua testimoni-testimoni dan dokumen-dokumen dan, dengan betul membenarkan tuntutan plaintif terhadap defendan dalam Guaman 2 dan menolak tuntutan plaintif terhadap defendan-defendan dalam Guaman 2. Tiada kekhilafan untuk dirayu yang mewajarkan campur tangan rayuan (lihat perenggan 44).

(2) Perayu tidak boleh mengekalkan tindakan terhadap defendant berdasarkan pencerobohan kerana mereka bukanlah pemilik benefisial tanah. Plaintif-plaintif tidak mempunyai locus standi. Keterangan daripada wakil Cekap menunjukkan bahawa plaintif-plaintif hanya membeli sebahagian tanah dan bukan keseluruhan tanah, seperti yang diplidkan. Tambahan lagi, tanah yang mana terbina atasnya kuil bukanlah atas bahagian tanah yang dibeli oleh plaintif-plaintif. Malah Cekap berjanji untuk menyumbangkan tanah di mana terbinanya kuil, bukan kepada penghuninya tetapi badan yang dibentuk. Dalam kata lain, penghuni penghuni-penghuni perlu menubuhkan jawatankuasa kuil dan hanya selepas lot dibahagikan barulah niat dalam surat ikatan hadiah boleh dikuatkuasakan. Tanah yang mana terdirinya kuil tersebut digunakan oleh penganut-penganut dan awam dan tidak khusus buat penggunaan plaintif-plaintif dan/atau keluarganya (lihat perenggan 35, 37 & 39).

(3) Pada asalnya kuil diuruskan dan ditadbir oleh jawatankuasa kuil yang tidak rasmi yang termasuk penganut-penganut Hindu dan penghuni-penghuni yang tinggal dan bekerja di estat Sin Wah hingga 2001. Bil air dan elektrik didaftarkan bawah nama pemegang amanah dan/atau persatuan. Kesemua perbelanjaan bagi pembelian item-item upacara keagamaan yang diadakan oleh kuil dibuat oleh persatuan. Selanjutnya, ketrangan dokumentari membuktikan resit-resit sumbangan dibuat oleh awam bagi penyenggaraan dan pengurusan kuil.

A Terlampau banyak keterangan yang menyokong plaintif dalam Guaman 2 (lihat perenggan 28 & 42).]

Notes

For cases on trespass in general, see 12(2) *Mallal's Digest* (5th Ed, 2017 Reissue)
B paras 2396–2398.

Cases referred to

Gan Yook Chin (P) & Anor v Lee Ing Chin @ Lee Teck Seng & Ors [2005] 2 MLJ 1; [2004] 4 CLJ 309, FC (refd)
C *Lee Ing Chin @ Lee Teck Seng v Gan Yook Chin & Anor* [2003] 2 MLJ 97, CA (folld)

Appeal from: Civil Suit Nos 22–29 of 2010 and 22–50 of 2010 (High Court, Taiping)
D

R Sivarasa (R Prabhakaran with him) (R Kengadharan & Co) for the appellants.
Gooi Hsiao Leung (S Vimala with him) (Gooi & Assoc) for the respondents.

Asmabi Mohamad JCA (delivering judgment of the court):

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INTRODUCTION

[1] There are two appeals fixed before us. Appeal No A-02(W)-1496–09 of 2015 ('Appeal No 1496') is an appeal by the appellants, Kannan a/l Munian,
F Munusamy a/l Periasamy, Atchuthan a/l Subramaniam and Anthony a/l Soosai ('the plaintiffs in the High Court Civil Action No 22–29 of 2010 ('Suit 1')') against the decision of the learned High Court judge of Taiping ('the learned judge') dated 30 December 2015 made after a full trial, which dismissed the appellants' claim against the respondents who are the committee members of
G Persatuan Penganut Dewa Sri Maha Marriamman Ladang Sin Wah (Metro Kajang) Kamunting ('the defendants in the High Court Suit 1') with costs.

[2] In essence, Appeal No 1496 relates to the claim by the plaintiffs who are the beneficial owners of a portion of the land held under Title No Grant
H No 26834, Lot No 6814, Mukim Kamunting, Daerah Larut dan Matang, Perak Darul Ridzwan ('the said land') against the defendants for the tort of trespass. Appeal No 1496 originates from Civil Action No 22–29 of 2010 ('Suit 1') where the appellants are the plaintiffs and the first to fifth respondents are the defendants.

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[3] Appeal No A-02(W)-1497–09 of 2015 ('Appeal No 1497') is also an appeal by the same appellants as in Appeal No 1496 against the decision of the learned judge dated 30 December 2015, which allowed the claim filed by Gopal a/l Subramaniam ('the plaintiff in the High Court Civil Action No

22–50 of 2010 ('Suit 2')'), on behalf of Persatuan Penganut Dewa Sri Maha Mariamman Ladang Sin Wah (Metro Kajang) Kamunting ('the society') with costs.

[4] The claim by the plaintiff in Suit 2 is for a declaration that the society is and was at all material times, the valid and registered body to manage and administer the affairs of the 'Kuil Dewa Sri Maha Mariamman Ladang Sin Wah (Metro Kajang) Kamunting ('the temple'). Appeal No 1497 originates from Civil Action No 22–50 of 2010 ('Suit 2') where the appellants are the defendants and the first respondent is the plaintiff.

[5] Suit 1 was filed on 10 August 2010 in response to this suit the first respondent in Suit 1 filed Suit 2. Both these cases were heard and disposed together by the learned judge.

[6] Aggrieved by the decisions, the plaintiffs and the defendants in Suit 1 and Suit 2 respectively filed these appeals against the decisions of the learned judge.

[7] After having perused the appeal records, the written submissions of the respective parties as well as hearing the oral arguments on the issues raised, we dismissed both these appeals with no order as to cost.

[8] Our reasons for doing so now follow.

[9] For ease of reference the parties will be referred to, where necessary as they were described in the Suits 1 and 2 respectively.

BRIEF BACKGROUND FACTS

[10] The plaintiffs in Suit 1 are the owners of a portion of the said land.

[11] The defendants in Suit 1 are the committee members of the society. The first defendant in Suit 1 is the plaintiff in Suit 2 who filed Suit 2 on behalf of the society.

[12] In essence, the dispute between the plaintiffs and the defendant is over a Hindu temple known as Kuil Sri Maha Mariamman Ladang Sin Wah (Metro Kajang) Kamunting ('the temple') which stood on the same land held under title No 26834, Lot No 6814, Mukim Kamunting, Daerah Lumut dan Matang, Perak, Darul Ridzuan ('Lot 6814').

[13] The plaintiffs sued the defendants for trespass on the land, on which the temple stood, which they claimed they are the beneficial owners pursuant to a deed of settlement they had entered into with the land owner, Cekap Corp Bhd ('Cekap'), on 9 September 2009 ('the deed of settlement').

[14] The defendant, on the other hand, denied that the plaintiffs were the beneficial owners of Lot 6814 on which the temple stood and asserted that the society had been running and managing the said temple since 2001. The first defendant in Suit 1, on behalf of the society, filed Suit 2 on behalf of the society seeking for a declaration that the society was at all material times, the registered body administering and managing the said temple.

[15] When these cases came up for hearing before the learned judge, both parties had agreed for the court to proceed with the case by determining the following two issues:

(a) whether the plaintiffs in Suit 1 were the beneficial owners of Lot 6814; and

(b) which party had been administering and managing the affairs of the said temple at all material times.

AT THE HIGH COURT

The plaintiffs' case

[16] In Suit 1, the plaintiffs led by the third plaintiff, a priest, claim the plaintiffs are the beneficial owners of the land on which the temple stood. The plaintiffs filed the case against the defendants, the former occupiers of the said land for the tort of trespass.

[17] The land known as grant No 26834 Lot 6814, Mukim Kamunting, Daerah Larut dan Matang, Perak is known as Sin Wah estate. This land was sold to Cekap which subsequently sold the land to Kamunting Setia Maju Sdn Bhd.

[18] Pursuant to a deed of trust dated 9 April 2009 ('deed of trust'), the plaintiffs were appointed trustees to the following occupiers:

(a) Vekineshwaran a/l Kannniah (personal representative of the late Kanniah a/l Ramaih);

(b) Narasiaman a/l Periasamy;

(c) Rajoo a/l Sondanam;

(d) Ramaih a/l Mariapan;

(e) Gouri a/l Mariappan (personal representative of the late Suresh a/l M Maniam); and

(f) Sivapakkiam a/p Munusamy (personal representative of the late Maniam a/l Munusamy).

[19] On 9 September 2009, the land owners of Lot 6814 had entered into a deed of settlement with Cekap (see exh P1 at pp 96–106 of appeal records ('AR')) for the purchase of the said lot at the price of RM310,500. The plaintiffs had paid the full purchase price to Cekap based on the terms and conditions stated in the deed of settlement.

[20] Pursuant to cl 5 of the deed of settlement, the occupiers of the said land had appointed the plaintiffs as their representatives. It was part of the terms of the said deed of settlement that the plaintiffs would, at a later date, be registered as the owner of the land.

[21] Under cl 20 of the deed of settlement, if the plaintiffs and the occupiers of the said land were able to pay the full purchase price within the stipulated time stated therein, Cekap would by way of a gift, donate a portion of the land measuring approximately 1.5 acres on which the temple stood, currently managed by the plaintiffs and/or the trustees, to the plaintiffs.

[22] The temple which was built about 70 years ago was run and managed by the estate workers as at that time there was no committee being appointed to run and/or manage the temple.

[23] The defendants, who were the committee members for 2010/2011 of the society, were not involved with the signing of the deed of settlement and/or had anything to do with the negotiations with Cekap pertaining to the temple land.

[24] On 8 August 2010, the defendant and/or its employee and/or its agent and/or a third party who colluded with the defendants had entered into the temple by breaking open the padlock of the gate of the temple without any permission from the plaintiffs who were owners of the temple. The defendants had caused the personal items of the third plaintiff as well as praying items in the temple to be thrown away.

[25] Vide Suit 1, the plaintiffs amongst others, claimed from the defendants for injunctive relief, general, punitive and exemplary damages.

Case for the defendants

[26] The defendants vide its witnesses stated as follows:

(a) the defendants had registered the society on 18 April 2001 and had since run and managed the temple without any objections from the plaintiffs (see exh 31 at p 82 Vol 2 AR);

(b) the plaintiffs, headed by the third plaintiff were performing the daily prayers at the said temple. They were also assisting the society in other prayers arranged and managed by the defendants on behalf of the society;

(c) however, in 2008, due to certain misconduct of the third plaintiff in the performance of his duties as a priest at the said temple, a dispute arose between the plaintiffs and the defendants;

(d) as the third plaintiff had refused to give the defendants the keys to the temple after he was sacked as a priest by the defendants, the defendants broke the padlock of the gate of the temple in order to gain entry into the temple that they were running and managing;

(e) under the deed of settlement, the plaintiffs and the occupiers of the said land only purchased a portion of the land and not the whole lot as pleaded. The temple was not built on the portion of the land purchased by the plaintiffs but it stood on a portion of Lot 6814 distinct and separate from the plaintiff's portion. In view of the above, the plaintiffs were not the beneficial owners of the whole lot as claimed by them;

(f) pursuant to the deed of settlement, Cekap would by way of a gift donate 1.5 acres of the land where the temple stood to the committee registered to manage the temple. The terms of the deed of settlement envisaged that a deed of gift would be executed at a future date with the committee to be registered for the purpose of managing the temple;

(g) to date, the owner of the land had not executed any deed of gift with any party to donate the said land for the purpose of the temple; and

(h) the society had been legally established to manage the temple since 2001. The claim of the plaintiffs that the defendants had trespass is not true in the circumstances of the case.

The decision of the High Court

[27] As the parties had agreed to narrow down the issues for the court's determination to only two issues mentioned above, the decision of the court will be centered only on these two issues.

[28] The findings of the learned trial judge after a full trial were as follows. A

Issue 1: Whether the plaintiffs were the beneficial owners of the land where the temple stood:

(a) as reflected in para 1 of the plaintiffs' statement of claim ('SOC') of Suit 1, the plaintiffs pleaded that they are the beneficial owners of the land known as grant No 26834 Lot No 6814, Mukim Kamunting, Daerah Larut dan Matang, Perak, based on the deed of settlement dated 9 September 2009 entered into between Cekap and the plaintiffs. The consideration for the said deed of settlement was RM310,000; B C

(b) a perusal of the deed of settlement ('exh P1') showed that the plaintiffs did not purchase the whole lot as pleaded in para 1 of the SOC of Suit 1 but only a portion of the lot, approximately 1.40 acres from the 2.05 acres of the whole land (see Recital B and G at pp 94 and 95 of Vol 2 AR); D

(c) the purchase of the portion of the land by the plaintiffs did not include the land on which the temple stood. The plaintiffs had only purchased the portion of the land they occupied. The rest of the land is agricultural land known as Parcel No 37, Held under HS (M) 984, PT No 1387, Mukim Kamunting, Daerah Larut dan Matang, Perak (see Recital B at p 95 of Vol 2 AR); E

(d) cl 20 of the deed of settlement stated that if the deed of settlement had been duly completed within the stipulated period stated in the deed of settlement, Cekap agreed to donate a piece of land measuring approximately 1.5 acres within the land, currently occupied by a Hindu temple operated by the occupiers' to the occupiers' Hindu temple committee/trustees, subject to final issuance of the title. A separate deed of gift shall be signed by Cekap and the Hindu temple committee/trustee within six months from the completion date; F G

(e) cl 20 did not stipulate to whom the said land would be donated to. In view of this the plaintiffs contention that they were beneficial owners is without basis; H

(f) pursuant to the deed of assignment, the deed of gift is the instrument to effect the donation of the land on which the temple stood to be executed only upon subdivision of the land and after a separate title to be issued;

(g) the defendant's witness, one Khong Wei Cheung ('PW2') from Cekap testified that the subdivision of Lot 6814 could not be executed as the said land had been sold to Kamunting Setia Maju Sdn Bhd; and I

(h) the evidence showed that there was no deed of gift having been executed in favour of the plaintiffs. Hence, the plaintiffs claim that they were

beneficial owners of the land could not be sustained. In view of the aforesaid the plaintiffs have no locus standi to commence Suit 1 against the defendants for trespass.

Issue 2: Who was administering and managing the affairs of the temple at all material times

(a) there was contradictory evidence given by the plaintiffs' witnesses. The third plaintiff ('PW1') testified that under the deed of settlement, Cekap had agreed to donate the temple to the ten occupiers and their families as these occupiers had purchased the portion of the land they were occupying. Whilst PW2 testified that the land on which the temple stood would be donated to the 'legal committee' to be set up by the ten occupiers. The learned judge accepted the evidence of PW2 that it was not the intention of the deed of settlement for the temple land to be given to the occupiers in their personal capacities;

(b) PW2 further testified, the temple land was not donated to the occupiers and families who purchased the portion of the said land in their personal capacity but it is for the benefit of the whole of the Hindu community in the said area and meant to be used by all Hindu devotees;

(c) the evidence showed that the temple land would only be donated to a body legally created to manage the affairs of the temple for the benefit of those who live around the temple and not specifically given to the ten occupiers of the portion of Lot 6814 or their families;

(d) both the plaintiffs and the defendants had been living together in Sin Wah estate for a long time. All of them were once employees of the Sin Wah's estate. They knew each other well and all of them were involved in the activities of the temple;

(e) PW1 admitted, from 1985–2001, the first defendant in Suit 1, Gopal a/l Subramaniam ('DW1') was the chairman of the 'informal temple committee', Ranganathan a/l Ratnam ('DW2') a trustee of the society, an ex-treasurer, Mususamy a/l Yellappan and current trustee of the society and an ex-chairman of the 'informal temple committee' were and are responsible for the management of the temple;

(f) the evidence before the learned judge showed that the said temple was managed by the 'informal temple committee' who were the worshippers and occupiers who had been living in the said area and/or working in the said estate since 2001;

(g) this 'informal temple committee' then took steps to register the society in order to become a formal body to undertake the task to run and manage the temple as envisaged in the deed of gift;

(h) this is further supported by the three signboards indicating the existence

of temple. The first signboard is at the office of the temple. The second signboard is located at the side of the main road leading to the temple which was put up around 2005/2006. The last signboard is placed very near the temple (see exhs D11B, D12C and D63A and D63B respectively);

(i) the evidence of the defendant is further supported by the evidence of Datuk Mohan a/l Shanmugam ('PW3'), the President of Hindu Sangam Malaysia, who testified that the defendant had been registered with Hindu Sangam since 27 February 2002 as a body representing the temple and had been entrusted with the responsibilities to manage and control the daily religious activities of the temple;

(j) the evidence of DW1 and DW2, proved that the water bills were registered in the name of Munusamy a/l Yellapan as trustee (see exh D4). The electricity bill is registered in the name of the society (see exh D3). All purchases of items such as fruits, flowers and etc for the prayers which were held two or three times in a year were all paid by the society (see exhs D19 and D34);

(k) besides the above, the society too had been receiving donations from the public for the purpose of the management and upkeep of the temple (see exh D33, statement of account for year 2009);

(l) the permits to hold prayers as well as other activities of the temple were applied for by the defendants on behalf of the society (see exhs D37, D7, D8 and D9);

(m) all renovations and maintenance works were undertaken by the defendants using the funds donated by the public (see exhs D10A–C, D11A–B, D12A–D, D13, D14, D43, D44, D47, D49, D50, D51, D54, D55, D56 and D59);

(n) there was overwhelming evidence to prove the above. The plaintiff was not able to challenge the evidence adduced by the defendants;

(o) from the evidence adduced before the learned judge, from 2001 to date of Suit 1 and even to date of trial, the society was in full control of and/or responsible for the management of the temple for the benefit of the Hindu worshippers in the said area; and

(p) based on the evidence placed before the learned judge, as shown above, the learned judge was satisfied that the defendant was entitled to the declaration sought by them as pleaded in their SOC in Suit 2.

OUR DECISION

The law

[29] We were mindful of the limited role of the appellate court in relation to findings of facts made by the court of first instance especially after a viva voce evidence.

[30] In the course of that, we had sought guidance from the very often quoted case of *Lee Ing Chin @ Lee Teck Seng v Gan Yook Chin & Anor* [2003] 2 MLJ 97 where the Court of Appeal held as follows:

> an appellate court will not, generally speaking, intervene unless the trial court is shown to be plainly wrong in arriving at its decision. But appellate interference will take place in cases where there has been no or insufficient judicial appreciation of the evidence.

[31] Reference is also made to the decision of the Federal Court in *Gan Yook Chin (P) & Anor v Lee Ing Chin @ Lee Teck Seng & Ors* [2005] 2 MLJ 1; [2004] 4 CLJ 309 where the Federal Court held that the test of 'insufficient judicial appreciation of evidence' adopted by the Court of Appeal was in relation to the process of determining whether or not the trial court had arrived at its decision or findings correctly on the basis of the relevant law and the established evidence.

The appeals before us

[32] Having perused the appeal records, especially evidence of the plaintiffs' witnesses as well as the defendants' witnesses in both Suit 1 and Suit 2 and the documentary evidence tendered in court, the learned judge rejected the evidence of the plaintiffs in Suit 1 and accepted the evidence of the plaintiff in Suit 2 and ruled in favour of the plaintiffs in Suit 2 on both issues that were posed for the court's determination.

[33] We observed that the learned judge was clear with the real issues before him as pleaded by both parties and decided that the dispute between the parties could be resolved once and for all by answering both the issues as stated herein.

[34] With respect to issue 1 the plaintiffs had pleaded in para 1 of their SOC in Suit 1 that they are the beneficial owners of a piece of land known as grant No 26834, Lot No 6814, Mukim Kamunting, Daerah Larut dan Matang, Perak Darul Ridzuan. However, upon perusal of the documentary evidence adduced in court vide the deed of settlement ('exh P1'), under Recital D, the land purchased by the plaintiffs was approximately 1.40 acres and formed a portion of land described in Recital A of the same document. This is further supported by Recital G which clearly stated that Cekap sold only a portion of the land to the plaintiffs.

[35] The evidence of a representative from Cekap, one Kong Wei Cheung ('PW2') further reinforced the fact that the plaintiffs had only purchased a portion of the said land and not the whole of the said land as pleaded. There was also a finding of fact made by the learned judge that the land on which the temple stood was not on the portion of the land purchased by the plaintiffs.

[36] The learned judge had ruled that under cl 20 of the deed of settlement, the land where the said temple stood is also situated within Lot 6814, which Cekap had agreed to donate separately by way of a deed of gift to the occupiers' hindu temple committee/trustee. However, until the trial of both Suits 1 and 2 there was no deed of gift having been executed between Cekap and the committee of the occupiers' hindu temple committee or trustees.

[37] In fact, PW2 in his testimony stated that Cekap made a promise to donate the land where the temple stood not to the occupiers but to a body to be constituted. In short the occupiers were required to form a temple committee and only after Lot 6814 had been subdivided can the intention in the deed of gift be effected. PW2 had stressed that the land on which the temple stood is meant to be used by the devotees and the public and not specifically for use of the plaintiffs and/or their families.

[38] In view of the above findings, the learned judge ruled that the plaintiffs has no locus to maintain a cause action premised on the tort of trespass against the defendants.

[39] Having perused the learned judge's grounds of judgment and considered the evidence before the learned judge, we could not disagree with the learned judge's findings that the plaintiffs could not maintain the action against the defendant on trespass as they are not the beneficial owners of the land.

[40] In view of the foregoing, we agree with the learned judge's resolution of issue 1.

[41] Turning now to the second issue as to whether the defendant in Suit 2 had been managing the said temple and entitled to the prayers sought in Suit 2.

[42] We observed that the learned judge had painstakingly evaluated the evidence before him and based on the following evidence the learned judge concluded that the plaintiff in Suit 2 had proven his case against the defendants.

(a) the testimonies of the defendant in Suit 2, Gopal a/l Subramaniam ('DW1') who is the chairman of the society, Ranganathan a/l Ratnam

('DW2'), the society's trustee and former treasurer, Datuk Mohan a/l Shanmugam ('DW3'), the President of Malaysian Hindu Sangam, a national body responsible for the promotion of the Hindu religious affairs in Malaysia are more probable as compered to the plaintiffs' evidences;

(b) that the temple had initially been managed and run by an 'informal temple committee' consisting of Hindu devotees and the occupiers who live and work in Sin Wah estate until 2001. After which the 'informal temple committee' was registered with the registrar of society (see exh D13);

(c) the presence of the sign boards of the temple managed by the plaintiffs in Suit 2 at three conspicuous places as illustrated herein;

(d) the confirmation by DW3, Datuk Mohan a/l Shanmugam that the society had been registered with Hindu Sangam on 27 February 2002;

(e) water bills and electricity bills registered in the name of the trustees and/or society;

(f) all expenses for the purchase of items for the religious ceremonies held by the temple were made by the society;

(g) documentary evidence to prove receipts of donations from the public for the maintenance and management of the temple;

(h) applications of permits to hold prayers and other related religious activities made by the society;

(i) renovations and maintenance of the temple undertaken by society using the funds donated by the public; and

(j) the above evidence was not challenged by the defendants in Suit 2.

[43] Upon our close scrutiny of the evidence before the learned judge we found that the evidence was overwhelmingly in favour of the learned judge's ruling for the plaintiff in Suit 2.

CONCLUSION

[44] Having examined the pleadings, the notes of proceedings, and having heard the respective learned counsels, we found that with respect to two appeals before us, the learned judge had sufficiently evaluated the evidence before His Lordship, both testimonial and documentaries and had correctly allowed the plaintiff's claim against the defendants in Suit 2 and dismissed the plaintiffs' claim against the defendants in Suit 1. We are satisfied there was no appealable error which merit our intervention.

[45] Based on the aforesaid, we unanimously affirmed the learned judge's decision which allowed the plaintiff's claim in Suit 2 with no order as to cost. With respect to the plaintiffs' appeal against the decision of the learned judge which dismissed the plaintiffs' claim against the defendants in Suit 1, we dismissed the plaintiffs' appeal also with no order as to costs. We also ordered for the deposits to be refunded.

[46] We therefore ordered accordingly.

Ordered accordingly.

Reported by Afiq Mohamad Noor